



# **Payment Eligibility and Limitations**

## **Background**

A limitation on the total annual payments that a “person” may receive under agricultural programs has been in effect since enactment of the Agricultural Act of 1970. Subsequent legislation, most recently the Federal Agriculture Improvement and Reform Act of 1996, modified the provisions that define a “person” and the rules for payment limitation and payment eligibility.

## **Applicability**

The basic regulations apply to payments and benefits made under a variety of programs, including production flexibility contract payments, loan deficiency payments, and Conservation Reserve Program payments.

The table at right summarizes which rules apply to USDA-administered programs. Other payments and benefits may also be subject to some or all of these rules.

### **“PERSON” DETERMINATIONS**

A “person” for payment limitation purposes may be many things, including an individual, a limited liability partnership, a limited liability company, or an individual participating as a member of a joint operation or similar operation; a corporation, a joint stock company, an association, a limited stock company, a limited partnership, an irrevocable trust, a revocable trust together with the grantor of the trust, estate, or charitable organization, including

Applicable Rules and Limitations						
Program or payment	Person	Payment Limitation	Actively Engaged in Farming	Cash-Rent Tenant	Permitted Entry	Foreign Person
Production Flexibility Contracts	X	\$40,000	X	X	X	X
Marketing Assistance Loans						X
Loan Deficiency Payments & Marketing Loan Gains	X	\$75,000 (\$150,000 for 1999 & 2000 only*)	X	X	X	X
Other Programs						
EQIP	X	\$10,000				
CRP Rental Payments	X	\$50,000	X	X	X	X
NAP	X	\$100,000				

\*As mandated in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Acts, 2000 & 2001.

NOTE: The payment limitation may be on a fiscal year, crop year, or program year basis, depending on the program.

any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity; a State, political subdivision, or agency thereof. For an individual or entity to be considered a separate “person,” the individual or entity must have a separate and distinct interest in the land or crop involved, exercise separate responsibility for this interest, and maintain funds or accounts separate from that of any other individual or entity for this interest.

### **STATUS DATE**

The status of an individual or entity on April 1 of the applicable program year or fiscal year is the basis for determining the number of persons for payment limitation purposes. Actions taken by an individual or

entity after that date to increase the number of “persons” will not be recognized for the current program or fiscal year.

### **Husband and Wife**

The general rule is that a husband and wife are considered one “person” for payment limitation purposes. However, they may be considered separate “persons” if they request to be considered separate “persons” and one of the following exceptions applies:

- Neither spouse holds, directly or indirectly, a substantial beneficial interest in more than one entity receiving payment as a separate “person” (including an interest as an individual), and they meet all other requirements to be considered separate “persons.”

- Both spouses were separately engaged in unrelated farming operations before their marriage and the farming operations of both spouses have been maintained as totally separate and distinct farming operations after their marriage.

### **Corporations**

A stockholder of a corporation who owns more than 50 percent of the stock in the corporation will be combined as one “person” with the corporation. Also, any two or more stockholders, partners, or members that own more than 50 percent of the interest in each of two or more corporations, limited partnerships, limited liability companies, or other similar entities with farming interests will be combined as one “person.”

### **Estates**

Any individual or entity that would have been combined as one “person” with a now deceased individual will also be combined as one “person” with the estate of that deceased individual. However, a sole heir of an estate will not be combined as one “person” with the estate simply because the individual or entity is the sole heir.

### **Trusts**

A sole beneficiary of a trust will be combined as one “person” with the trust, as will the grantor of a revocable trust. Any two or more trusts in which the same two or more beneficiaries hold more than 50 percent of each trust will be combined as one “person.” Trust agreements will be scrutinized to determine if the trust contains

provisions which would require the trust to be considered revocable for payment limitation purposes.

### **Minor Children**

Parents of minor children with farming interests are combined as one “person” with the minor children with the following exceptions:

- If the parents of a minor child are divorced, the minor child will be combined with the parent or parents having legal custody.
- If the parents otherwise qualify as separate “persons” according to FSA rules, the minor children shall be combined as one “person” with the parent receiving the larger amount in payments, directly or indirectly.

### **“Actively Engaged in Farming”**

To be eligible for payments and benefits under some programs, a producer must be considered “actively engaged in farming.” Generally, in order to be considered “actively engaged in farming,” the producer must provide significant contributions to the farming operation which are commensurate to the claimed share of the farming operation and at risk.

### **Significant Contribution**

Generally, in order to be determined “actively engaged in farming,” a producer has to make a significant contribution of capital, land, and/or equipment to their farming operation, as well as a significant contribution of active personal labor and/or active personal management.

For payment limitation purposes, capital consists of the funding provided by an individual or entity to

the farming operation for the operation to conduct farming activities.

### **Commensurate and At Risk Contributions**

The individual or entity must also have a claimed share of the profits or losses from the farming operation that is commensurate with contributions to the farming operation and have contributions that are at risk. In other words, the individual or entity cannot be claiming a greater share of the profits or losses of the farming operation than is supported by the contributions the individual or entity makes to the farming operation.

### **General Rules**

Active personal labor is labor that is actually performed by the individual in question. To be considered a significant contribution, it must be an amount that is the smaller of:

- 1,000 hours per fiscal or crop year.
- 50 percent of the total hours that would be required to conduct a farming operation comparable in size to this individual’s or entity’s commensurate share in the farming operation.

The contribution of active personal management must be critical to the profitability of the farming operation, taking into consideration the individual’s or entity’s commensurate share in the farming operation.

### **Exceptions**

While the general requirements for “actively engaged in farming” demand inputs of capital, land, or equipment and inputs of active personal labor or active personal management, certain exceptions to these requirements are permitted.

## **Landowners**

A landowner may be considered “actively engaged in farming” with respect to owned land if:

- The landowner contributes owned land to the farming operation for which the landowner receives rent or income for use of the land based on the land’s production or the operation’s operating results.
- The landowner’s share of the profits or losses from the farming operation is commensurate with the landowner’s contribution to the operation.
- The landowner’s contributions are at risk.

## **Sharecroppers**

A sharecropper must meet all these requirements to be considered “actively engaged in farming:”

- The sharecropper makes a significant contribution of active personal labor to the farming operation for which the sharecropper receives a specified share of the crop produced on the farm.
- The sharecropper’s share of the profits or losses from the farming operation is commensurate with the contribution to the operation, and
- The sharecropper’s contributions are at risk.

## **Cash-Rent Tenant**

A cash-rent tenant will be ineligible to receive payment unless the tenant makes either a significant contribution of active personal labor or a significant contribution of management and a significant

contribution of equipment to the farming operation.

## **Permitted Entities**

No individual may receive payments subject to these rules from more than three entities in which the individual holds substantial beneficial interest. Individuals who receive payments as an individual may not also receive payment from more than two entities that receive payment as a separate “person.”

For example, if an individual has a farming interest as an individual and also owns stock in six corporations that also farm, the individual must select just two of those corporations through which the individual may indirectly receive payments. The payments to the other four corporations will be reduced by the same percentage that the individual owns in each of the other four corporations. If the individual did not have an individual farming interest, three of the corporations could be selected as “permitted entities.”

Any individual who owns 10 percent or more of a corporation or other entity that is earning payments subject to these rules, either directly or indirectly, will be required to select that interest as “permitted” before that share of the payment may be paid to the entity.

## **Notification**

All entities earning payment subject to these rules must report to their local FSA committee the name and social security number of each individual that owns, either directly or indirectly, any interest in such entity. A contract to participate in

the applicable programs will not be considered complete until this information is provided.

The entity also is required to inform all members of the entity of the rules regarding payment eligibility and permitted entities.

## **Foreign Persons**

In addition to the requirements for “person” and “actively engaged,” foreign persons, other than individuals lawfully admitted into the United States (registered aliens), are not eligible to receive any program benefits, including commodity loans, unless that foreign person provides a significant contribution of capital, land, and active personal labor.

## **For More Information**

This fact sheet is not meant to be all-encompassing. It provides general guidelines only.

For more information regarding determinations and limits, contact your local County FSA office.

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